

PT 07-12

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**LIFE ABUNDANT OUTREACH,
INC. OF GLENVIEW,
Applicant
v.**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

**Docket No.: 06-PT-0035
Real Estate Tax Exemption
for 2005 Tax Year
P.I.N. 20-31-400-007-0040
McHenry County Parcel**

**Ted Sherrod
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David N. Stone, Assistant State's Attorney, on behalf of McHenry County; Mr. Mark Dyckman, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

Synopsis:

This proceeding raises the issue whether the subject property, identified by McHenry County Parcel Index Number 20-31-400-007-0040 (hereinafter the "subject property") qualifies for exemption from 2005 real estate taxes under 35 ILCS 200/15-40 which exempts "[a]ll property used exclusively for religious purposes ... [.]". The controversy arises as follows: On July 22, 2005, Life Abundant Outreach, Inc. of Glenview (hereinafter "Life Abundant" or "Applicant"), owner of the subject property, filed a PTAX-300-R Religious Application for Non-homestead Property Tax Exemption

– County Board of Review Statement of Facts for the residence on the subject property with the Board of Review of McHenry County (hereinafter the “Board”). The Board reviewed the Applicant’s application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the exemption be denied.

On February 17, 2006, the Department accepted the Board’s recommendation finding that the property was not in exempt use in 2005. On April 7, 2006, the Applicant filed a timely request for a hearing as to the denial. A formal evidentiary hearing concerning this matter was held on February 6, 2007, with Rev. Martin, pastor of Life Abundant, Gwendolyn Jones, Ruth Hudley and Mary Quinny testifying. Following a careful review of the record including the testimony and documentary evidence presented at the hearing, it is recommended that the subject property be denied an exemption for the 2005 tax year.

Findings of Fact:

1. The Department’s jurisdiction over this matter and its position therein are established by its Exhibit (hereinafter “Ex.”) Number (hereinafter “No.”) 1. Department Ex. No. 1.
2. The Department received the application for exemption of the subject parcel from the McHenry County Board of Review. *Id.* The Board recommended denial of the exemption. *Id.* The Department denied the requested exemption finding that the property was not in exempt use. *Id.*
3. On the PTAX-300-R, Religious Application for Non-homestead Property Tax Exemption – County Board of Review Statement of Facts submitted by the Applicant, in response to question 12(b) which states, “Is the minister or other

official required to reside in the property as a condition of employment or association?” the Applicant responded “[Y]es.” *Id.*

4. The Department’s position in this matter is that the subject property is not in exempt use. *Id.*
5. The primary function of the Applicant’s pastor is to conduct services at the Word of Faith Cathedral Church in Chicago, Illinois. Tr. p. 9.
6. The subject property is located in Barrington Hills, Illinois and improved with a one story residential facility in which Rev. Martin, the Applicant’s pastor, resides. Department Ex. No. 1.
7. The subject property is located about 48 miles from the Word of Faith Cathedral Church, a church owned and operated by the Applicant located on the south side of Chicago. Tr. p. 18; Department Ex. No. 2.
8. Applicant obtained ownership of the subject property by means of a warranty deed dated February 28, 2001. Department Ex. No. 1.
9. The Department introduced into the record by-laws of the Applicant which “[update] all previous by-laws for Life Abundant ...[.]” Department Ex. No. 2. These by-laws state that “[I]t is a condition of Evangelist Ray Martin’s employment to reside in the parsonage owned by Life Abundant Outreach Inc.-Word of Faith Cathedral located at 93 W County Line Road, Barrington Hills IL to be employed at Life Abundant Outreach Inc.-Word of Faith Cathedral Church.” *Id.* These by-laws were, purportedly, signed by Rev. Ray Martin, Janice Martin, Gwendolyn Jones, Ruth Hudley, Mary Quinny and Carole Avant on August 21, 2005. *Id.*

10. The aforementioned by-laws state, *inter alia*, that:

- A.** “All property, real or personal, shall be taken, held, sold, transferred or conveyed in the corporate name of Life Abundant Outreach Inc. The president and/or vice-president of Life Abundant Outreach Inc. shall certify in such conveyance, lease or mortgage that the same [has] been duly authorized by the vote of the board or agreement only by Ray & Janice M. Martin until the time of their deaths. Such certificate shall be conclusive evidence thereof .. [.]”.
- B.** Applicant was started and founded by Evangelist Ray Martin in order to spread the Gospel of Jesus Christ by preaching in churches, tent revivals, auditorium crusades and “by radio, TV, US Mail, printed page and any other means ... [.]”
- C.** Evangelist Ray Martin is president of the corporation; Janice M. Martin, Ray Martin’s wife, is vice-president.
- D.** Either Ray or Janice Martin may act as secretary-treasurer.
- E.** Both Ray and Janice Martin shall remain in their respective positions for life.
- F.** Janice Martin shall become Applicant’s president and pastor at the time of Evangelist Ray Martin’s death or departure from office.

G. Salaries for Rev. Ray Martin and Janice Martin will be paid by Life Abundant Outreach Inc. and/or Word of Faith Cathedral Church.

Id.

11. Applicant was aware of his right to have an attorney but chose to proceed without counsel in this matter. Tr. p. 24.

Conclusions of Law:

An examination of the record establishes that Life Abundant has not demonstrated, through the presentation of testimony, exhibits and argument, evidence sufficient to warrant exempting the subject property from taxes for the tax year 2005. In support of this determination, I make the following conclusions.

Article IX, § 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill. 2d 484 (1992).

Pursuant to the authority granted by the Constitution, the legislature has enacted exemptions from property tax. At issue is the religious exemption found at 35 ILCS 200/15-40. This provision of the statute states as follows:

All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit, is exempt, including all such property owned by churches or religious institutions

or denominations and used in conjunction therewith as housing facilities provided for ministers (including bishops, district superintendents and similar church officials whose ministerial duties are not limited to a single congregation), their spouses, children and domestic workers, performing the duties of their vocation as ministers at such churches or religious institutions or for such religious denominations, and including the convents, and monasteries where persons engaged in religious activities reside.

A parsonage, convent or monastery or other housing facility shall be considered under this Section to be exclusively used for religious purposes when the church, religious institution, or denomination requires that the above listed persons who perform religious related activities shall, as a condition of their employment or association, reside in the facility.

35 ILCS 200/15-40

Property owned by a church and used as a parsonage or monastery was taxable prior to 1957. See People ex rel. Carson v. Muldoon, 306 Ill. 234 (1922); People ex rel. Pearsall v. Methodist Episcopal Church, 315 Ill. 233 (1924). The Illinois Supreme Court, in McKenzie v. Johnson, 98 Ill. 2d 87 (1983) held that the provision granting an exemption for a parsonage used primarily for religious purposes was constitutional. The court required that the parsonage must reasonably and substantially facilitate the aims of religious worship because the pastor's religious duties required that he live in close proximity to the church or because the parsonage had unique facilities for religious worship and instruction or was primarily used for such purposes.

The above statute allows an exemption for property used exclusively for religious purposes. Benedictine Sisters of the Sacred Heart v. Department of Revenue, 155 Ill. App. 3d 325, 329 (2d Dist. 1987). Property satisfies the exclusive use requirement of the property tax exemption statutes if it is primarily used for the exempted purpose, even though it may be used for a secular or incidental purpose. McKenzie, *supra* at 98.

Pursuant to 35 **ILCS** 200/15-40, housing facilities are exempt from property taxes if: (1) they are “owned by churches or religious institutions or denominations”; (2) they are used as “housing facilities provided for ministers” and other enumerated church officials; and (3) such ministers or other officials reside in the facility “as a condition of their employment.” 35 **ILCS** 200/15-40. In the instant case, it is undisputed that the subject property was purchased by Life Abundant on February 28, 2001, and that Life Abundant is a religious institution. Tr. pp. 16-20; Department Ex. No. 1. It is also undisputed that the residence at issue serves as a housing facility for Rev. Ray Martin, the pastor of the Applicant. *Id.* Accordingly, the sole question to be determined is whether in the instant case Rev. Martin resides in this residence a condition of his employment.

In its application to the McHenry County Board of Review, the Applicant stated that the Applicant’s pastor, Rev. Martin, was required to reside in the church parsonage as a condition of his employment. Department Ex. No. 1. In support of this claim, Applicant relies upon supporting documentary evidence that was introduced into the record, consisting of church by-laws dated August 21, 2005 which state that: “[I]t is a condition of Evangelist Ray Martin’s employment to reside in the parsonage owned by Life Abundant Outreach Inc.-Word of Faith Cathedral at 93 W County Line Road, Barrington Hills IL to be employed at Life Abundant Outreach Inc.-Word of Faith Cathedral Church.” Department Ex. No. 2.

The present case concerns the tax year that commenced on January 1, 2005. The by-laws upon which the Applicant relies to show that Rev. Martin was required to live in the parsonage at issue as a condition of his employment were executed by persons

that were purportedly members of the Applicant's Board.¹ The date on which these by-laws were executed was August 21, 2005.

By-laws are presumed to have only prospective effect unless the intention to make a particular by-law retroactive clearly appears. Fichter v. Milk Drivers' Union, Local 753, et al, 382 Ill. 91, 97 (1943). The by-laws at issue do not make the purported condition of Reverend Martin's employment to live in the subject property retroactive. The by-laws included in the record are the sole documentary evidence pertaining to the tax year at issue.² While these by-laws state that Rev. Martin was required to live in the parsonage as a condition of his employment, they do not support his claim that this requirement was imposed for the entire tax period at issue since they only pertain to the period from August 21, 2005 until the end of that year.

Moreover, there are obvious problems with these by-laws. Specifically, no corporate minutes were presented to show that the by-laws were voted on by members of the Applicant's Board. Nor is there any testimony or documentation in the record indicating what rules and procedures governed the election of Board members and whether these procedures were followed in naming the persons that signed the Applicant's by-laws to the Applicant's Board. Even were these problems not present,

¹ The by-laws dated August 21, 2005 were executed by Rev. Ray Martin, Janice Martin, Gwendolyn Jones, Ruth Hudley, Mary Quinney and Carol Avant. Department Ex. No. 2. These by-laws state that such persons have been elected to the Applicant's Board by the congregation of Word of Faith Cathedral Church. *Id.*

² While by-laws dated subsequent to 2005 were also introduced into the record (see Applicant's Ex. No. 1), those by-laws do not pertain to the tax year at issue in this case.

the record contains other evidence that negates any probative weight to be given this document.

The courts generally presume that a board of directors has acted in good faith and in furtherance of the organization's best interests when making decisions. Spillyards, et al v. Abboud, et al, 278 Ill. App. 3d 663, 681-682 (1st Dist. 1996). Accordingly, courts will not ordinarily interfere with a governing board's judgment absent a showing that the board members had a conflict of interest or failed "to inform themselves, prior to making the business decision, of all material information reasonably available to them." Id.

As noted, the by-laws signed by the Applicant's pastor, Rev. Martin, his wife and others on August 21, 2005 state as follows: "[I]t is a condition of Evangelist Ray Martin's employment to reside in the parsonage owned by Life Abundant Outreach Inc.-Word of Faith Cathedral located at 93 W County Line Road, Barrington Hills IL to be employed at Life Abundant Outreach Inc.-Word of Faith Cathedral Church." To rebut the Applicant's claim that this document made residing in the parsonage an actual condition of employment, counsel for McHenry County called three witnesses: Gwendolyn Jones, Ruth Hudley and Mary Quinny. The signature of each of these individuals appears on the by-laws dated August 21, 2005.

Gwendolyn Jones testified as follows:

Q. Are you familiar with a corporation by the name of Life Abundant Outreach of Glenview, Inc.?

A. Yes.

Q. And have you ever been a director of that corporation?

A. No.

Q. I'm showing you [a copy of the August 21, 2005 by-laws]. Does that bear your signature?

A. Yes.

Q. And for what purpose did you sign that document?

A. We -- I don't remember seeing this document at all. We signed a -- I believe it was a legal pad. I don't remember seeing this document at all.

Q. Did you believe on that date -- What date is your signature there?

A. August 21st, '05.

Q. On that date did you believe you were a director of Life Abundant Outreach of Glenview, Inc.?

A. No.

Q. Did you ever have any discussions about the issue of where Reverend Martin lived?

A. Not to my knowledge. ... This was just a meeting. He said we're going to have a meeting. It wasn't stated that it was a board meeting or anything. We just thought it was a regular little church meeting.

Q. But, as far as you know, you were never elected to a board of directors?

A. No, I was not.

Tr. pp. 58-60.

Ruth Hudley testified as follows:

Q. And you're a member of Reverend Martin's church?

A. Yes.

Q. Are you a director of Life Abundant Outreach ... ?

A. Director?

Q. Yes.

A. No.

Q. Have you ever been a director of Life Abundant Outreach,
Inc.?

A. No.

Q. I'm showing you [Applicant's by-laws dated August 21, 2005]
...Do you remember why you signed this document that I'm showing
you?

A. No.

Q. Do you know where Reverend Martin lives?

A. ... I can't think of the place. ... Glenview.

Tr. pp. 68-70.

Mary Quinny testified as follows:

Q. Now, I'm going to ask you: Are you a director of Life Abundant
Outreach of Glenview, Incorporated?

A. I am not a director, but my name is on there, up on the board.

Q. You are on the board. When did you become a board member?

A. Well, at first I didn't know what it was about, but now I do. ...

Q. Did you sign this document [Applicant's by-laws dated August 21,
2005]?

A. Yes, I did. That's my signature.

Q. And is that the one when you say you signed you didn't know what it was about?

A. Yes. ...

Q. Do you know where Reverend Martin lives?

A. Yes, near Fairbanks. Fairbanks.

Q. On [September 5, 2006] did you believe he lived in Glenview, Illinois?

A. Yes, I did.

Q. So you didn't know he lived in Barrington until [September 10, 2006]?

A. Right. ...

Q. (By Rev. Martin) It really doesn't make a difference to you where I live, does it?

A. No.

Tr. pp. 75-78.

The above-indicated testimony raises doubts as to whether the signatories of the Applicant's August 21, 2005 by-laws executed this document in any official capacity or as members of the Applicant's Board. Moreover, this testimony rebuts the presumption noted above that the Applicant's Board responsibly deliberated the issue whether a requirement that Rev. Martin live in the parsonage located in Barrington Hills was in the Applicant's best interest. Significantly, two of the witnesses admitted under oath that they did not know where Reverend Martin lives. Moreover, Mary Quinny testified that

she did not believe that where the pastor resides is relevant to his church functions in any way. Tr. p. 78. This testimony raises serious doubts concerning the legitimacy and credibility of the by-laws dated August 21, 2005 and rebuts any presumption that the Applicant's Board properly exercised their fiduciary duties in enacting the by-law provision relating to the pastor's residence.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill. 2d 141 (1956). Under Illinois law, any doubts must be resolved in favor of taxation. Id.; People Ex Rel. Nordlund v. Association of the Winnebago Home for the Aged, 40 Ill. 2d 91 (1968). As noted above, there are obvious problems with the record concerning the enactment of the by-laws dated August 21, 2005. However, the fundamental difficulty with the Applicant's case is that testimony in the record from purported members of the Applicant's Board that signed the Applicant's by-laws in August, 2005 flatly contradicts any claim that the by-laws were properly deliberated, or reflected a consensus of the Applicant's Board that the pastor must live in the parsonage in Barrington Hills as a condition of his employment. Indeed, this testimony supports the conclusion that the Board considered where the pastor resides to be irrelevant to Life Abundant and the conduct of its religious affairs. Tr. p. 78. Given this testimony, the by-laws cannot be accepted as probative evidence supporting the Applicant's contention. Moreover, there is no other credible evidence in the record to support the Applicant's claim that residing in Barrington Hills was a condition of Rev. Martin's employment.

In light of the foregoing, I find that Life Abundant has failed to meet its burden of showing that the parsonage at issue was used for religious purposes by meeting the criteria for the religious exemption enumerated in 35 **ILCS** 200/15-40. For this reason, it is recommended that real estate, identified by McHenry County P.I.N. 20-31-400-007-0040 remain on the tax rolls and be assessed to Life Abundant for the entire 2005 tax year.

Ted Sherrod
Administrative Law Judge

Date: March 27, 2007